



POLICE DEPARTMENT

June 17, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Thomas Kurilenko  
Tax Registry No. 904303  
Midtown North Precinct  
Disciplinary Case No. 2013-9776

Police Officer John Gaschler  
Tax Registry No. 920321  
46 Precinct  
Disciplinary Case No. 2013-9777  
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The above-named members of the Department appeared before me on April 20,  
and May 7, 2015, charged with the following:

Disciplinary Case No. 2013-9776

1. Said Police Officer Thomas Kurilenko, on or about April 7, 2012, at approximately 1700 hours, while assigned to the 46<sup>th</sup> Precinct and on duty, in the vicinity of 30 West 181<sup>st</sup> Street, Bronx County, abused his authority as a member of the New York City Police Department in that he stopped Person A without sufficient legal authority.

P.G. 212-11, Page 1. Paragraph 1 – STOP AND FRISK

2. Said Police Officer Thomas Kurilenko, on or about April 7, 2012, at approximately 1700 hours, while assigned to the 46<sup>th</sup> Precinct and on duty, in the vicinity of 30 West 181<sup>st</sup> Street, Bronx County, abused his authority as a member of the New York City Police Department in that he frisked Person A without sufficient legal authority.

P.G. 212-11, Page 1. Paragraph 2 – STOP AND FRISK

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Disciplinary Case No. 2013-9777

1. Said Police Officer John Gaschler, on or about April 7, 2012, at approximately 1700 hours, while assigned to the 46<sup>th</sup> Precinct and on duty, in the vicinity of 30 West 181<sup>st</sup> Street, Bronx County, abused his authority as a member of the New York City Police Department in that he stopped Person A without sufficient legal authority.

**P.G. 212-11, Page 1, Paragraph 1 – STOP AND FRISK**

2. Said Police Officer John Gaschler, on or about April 7, 2012, at approximately 1700 hours, while assigned to the 46<sup>th</sup> Precinct and on duty, in the vicinity of 30 West 181<sup>st</sup> Street, Bronx County, abused his authority as a member of the New York City Police Department in that he frisked Person B without sufficient legal authority.

**P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK**

3. Said Police Officer John Gaschler, on or about April 7, 2012, at approximately 1700 hours, while assigned to the 46<sup>th</sup> Precinct and on duty, in the vicinity of 30 West 181<sup>st</sup> Street, Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he searched Person A's vehicle without sufficient legal authority.

**P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT  
PROHIBITED CONDUCT**

The Civilian Complaint Review Board (CCRB) was represented by Vanessa McEvoy, Esq. Respondents Kurilenko and Gaschler were represented by John Tynan, Esq.

Respondents through their counsel, entered a plea of Not Guilty to the subject charges. The CCRB presented a tape and a transcript for two witnesses, Person A and Person B. The Respondents testified on their own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-9776

Respondent Kurilenko is found Not Guilty of Specification 1 and Guilty of Specification 2.

Disciplinary Case No. 2013-9777

Respondent Gaschler is found Not Guilty of Specification 1 and Guilty of Specifications 2 and 3.

FINDINGS AND ANALYSIS

It is undisputed that on April 7, 2012, at around 5:00 p.m., Respondents were in uniform patrolling in a marked RMP. In the area of 30 W 181 St., they observed one male inside a parked car and one male standing in an area near the car. The male who was in the car, Person B, threw an object, which turned out to be a cigarette box, out of the car. Respondents got out of the RMP and approached Person B and the other male, Person A. The officers had Person B step out of the car. Both Person B and Person A were frisked. (There is a dispute as to which officer frisked which male. In Person A's statement to CCRB he said that the taller one, who would be Respondent Kurilenko, frisked and searched him. CCRB X 1B, p. 11) Respondent Kurilenko testified that he frisked Person B and Respondent Gaschler frisked Person A. (Tr. pp. 55-56) Person B stated that the shorter one, who would be Respondent Gaschler, frisked him. (CCRB X 2B, p. 9))

Person A's pockets were searched. Respondent Gaschler looked inside the car in the area of the front and rear seats and he opened the glove compartment box. No



contraband or weapons were found on either Person A or Person B or in the car.

Person B was issued a summons for littering and he was later found guilty of littering.

Respondents testified that they were familiar with the area where they first saw the males and that it was an area where burglaries, firearms and narcotics activity had taken place. (Tr. pp. 19, 44) Both officers testified that after the males made eye contact with them, Person B threw the object out of the car. (Tr. pp. 20, 44) The officers further testified that based on their many years of experience, they thought that a drug transaction may be taking place. (Tr. p. 21). As Respondent Kurilenko stated, they reached this conclusion based on factors consisting of what they knew about the neighborhood being an area where a lot of drug transactions took place, the way the males looked directly at the officers and then threw an object, the way the male threw the object – which Respondent Kurilenko described as “winging” it – at least 15 to 20 feet from the car (Tr. p. 50) – and the way it appeared the male in the car was fiddling with something down in his feet area. (Tr. pp. 51, 58) Both officers also stated that from their experience they knew that cigarette boxes were often used in drug transactions as drugs were hidden in between the foil inside the boxes and the box itself. (Tr. pp. 38-39, 48)

With regard to Specification 1 of Case No. 2013-9776 and Case No. 2013-9777, the Respondents have admitted through their testimony that they stopped Person A in that they had him move to the back of the car and questioned, frisked and searched him. The initial question becomes whether they had sufficient legal authority to make that stop. This tribunal finds that they did have sufficient legal authority to make the stop and to question Person A.



Under P.G. 212-11, a uniformed member of the service may stop a person and request identification and explanation of conduct when he or she reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor. Here the two officers had grounds for a reasonable suspicion that a drug transaction had taken place. Each officer had extensive experience as a police officer in the area in question. Respondent Gaschler had been assigned to the 46 Precinct since 1998. (Tr. p. 17) Respondent Kurilenko had worked in the 46 Precinct for 21 years. (Tr. p.41) They both testified that they knew the area where they spotted Person B and Person A was a drug prone area. Respondent Kurilenko described it as "one of the most violent drug-prone locations in the whole -the city." (Tr. p. 51)

Their reason for stopping Person A in addition to stopping Person B, who had actually littered, was not just based on the drug-prone nature of the location. The officers described significant additional factors which led them to their suspicion that a drug transaction was taking place. These factors included, 1) the fact that it was upon making eye contact that the person in the car threw the object; 2) the way the person threw the object and the relatively far distance from the car the object was thrown; 3) the fact that they identified the object as a cigarette box which the officers knew was a common package to hide drugs in; and 4) their observations of how the person in the car was fiddling around inside the car. Based on all of these factors, as articulated by Respondents, they did have reasonable suspicion that a felony or a Penal Law misdemeanor, namely some type of drug transaction, was taking place and therefore they had sufficient legal authority for the stop and are Not Guilty of Specification 1.



While the stop of Person A was justified in this case, this tribunal does not find that either officer had sufficient legal authority in this case to go beyond that stop to frisk Person A or Person B or to search the car. As set out in P.G. 212-11, the officers in this case would have had to reasonably suspect that they or others were in danger of physical injury in order to conduct a frisk. Neither Respondent testified as to any facts that would cause them to believe that they or others were in danger. At the time the frisks were conducted, both Person A and Person B were behind the car and were not trying to get away. There was no testimony that they had any bulges in their clothing or that they appeared to have any weapons of any sort. Respondent Kurilenko testified that he saw there were no drugs in the cigarette box before he frisked the male. (Tr. p. 54) When specifically asked why he frisked the male, Respondent Kurilenko responded, "Well, he was wearing baggy clothes clothes, and in that area we didn't know what we had at that time." (Tr. p. 46) Respondent Kurilenko at this point, however, knew that there were no drugs in the cigarette box, as he reasonably had suspected prior to looking in the box. The fact that someone is wearing baggy clothes with no further indication that a weapon is present is not sufficient justification to conduct a frisk.

Respondent Gaschler also did not provide any testimony to indicate that either he or Respondent Kurilenko or anyone else was in any danger at the time of the frisk which he conducted which he said took place after Person B complied with the instruction to get out of the car and was located at the back of the vehicle. (Tr. p. 24)

While Respondent Kurilenko is charged with unlawfully frisking Person A and he testified he frisked Person B (Tr. p. 56), this tribunal finds that the preponderance of the evidence indicates he frisked Person A. Both Person A and Person B, in their statements to



CCRB indicated that the taller officer frisked Person A. Respondent Kurilenko described himself as 6'2" (Tr. p. 49) and Respondent Gaschler described himself as 5'10". (Tr. p. 28) Respondent Kurilenko also briefly mixed up the names of the two males in his testimony. (Tr. pp. 45-47) Respondent Gaschler indicated he was with the male who had been inside the car and that Respondent Kurilenko was with the other male, who would have been Person A. Respondent Kurilenko is therefore found Guilty of Specification 2 of Case No. 2013-9776 and Respondent Gaschler is found Guilty of Specification 2 of Case No. 2013-9777.

Respondent Gaschler has also been charged with unlawfully searching Person A's vehicle without sufficient legal authority. Respondent Gaschler admitted he went inside the car and searched around the area under the passenger's and driver's seats and in the back floor area. He testified he also opened the glove box. (Tr. pp. 26-27) He explained that the reason he went into the car is because there was a question as to the ownership of the car and that one of the males wanted to go back into the car to retrieve papers for the car. (Tr. p. 25) Person A. in his CCRB statement, said the officer did ask for the registration before Respondent Gaschler went into the car and he explained to them that he had it in his car. (CCRB X 1B, p. 22) Respondent Gaschler said he wanted to check that area to make sure there was nothing in the car that could hurt him before he let the male go back into the car to look for the papers. (Tr. p. 26)

Probable cause is required to search a vehicle. See People v. Langen, 60 N.Y.2d 170, 180-81 (1983). Even if Respondent Gaschler did have reason to question the ownership of the car, there was still no probable cause at that point for him to enter into the vehicle and search around inside of it. He testified that he did not see indications of



theft such as broken glass or wires hanging by the ignition or any screwdriver in the ignition. (Tr. p. 36) He also had not seen any weapon. (Tr. p. 35) He did not testify to any other non-intrusive steps he could have taken, such as requesting consent to enter the car to retrieve the registration or running the license plate to ascertain ownership of the vehicle. Since there was no probable cause, Respondent Gaschler is found Guilty of Specification 3 of Case No. 2013-9777.

### PENALTY

In order to determine an appropriate penalty, Respondents' service records were examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Kurilenko was appointed to the Department on August 30, 1993. Respondent Gaschler was appointed on December 8, 1997. Information from their personnel files that was considered in making this penalty recommendation is contained in attached confidential memoranda.

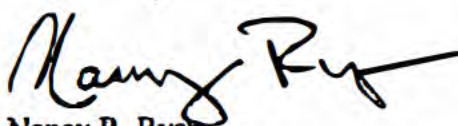
Both Respondents have been found Guilty of conducting frisks without sufficient legal authority. Respondent Gaschler has also been found Guilty of wrongfully searching Person A's vehicle. In *Case No. 2013-9623* (Mar. 4, 2015), a nine-year police officer with no prior disciplinary record received a reprimand for frisking and searching complainant without the requisite legal authority. In *Case Nos. 2013-9653 & 2013-9654* (Feb. 19, 2015), two eight-year members with no prior disciplinary record forfeited three vacation days each for stopping, frisking, and searching complainant without sufficient legal authority. In *Case Nos. 2013-9621 & 2013-9622* (Mar. 11, 2015), a nine-year police officer with no prior disciplinary record forfeited two vacation days for frisking



complainant's waistband without sufficient legal authority. While the stop was lawful, Respondent did not articulate any specific reason to suspect that complainant was carrying a weapon in that area. In *Case No. 2013-10189* (Jan. 13, 2015), a nine-year police officer with one prior adjudication forfeited four vacation days for, during the course of a car stop, searching the vehicle and its driver without sufficient legal authority. In *Case No. 2013-10071* (Feb. 19, 2015), a thirteen-year police officer with no prior disciplinary record forfeited five vacation days for searching complainant's vehicle without sufficient legal authority.

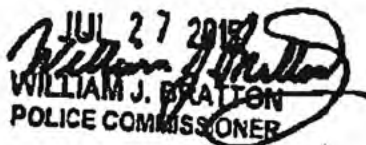
Based on the foregoing, it is recommended that Respondent Kurilenko forfeit four vacation days and that Respondent Gaschler forfeit six.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

**APPROVED**

JUL 27 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

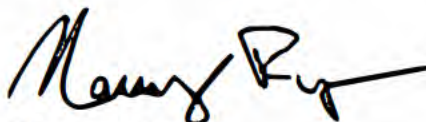
POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT THOMAS KURILENKO  
TAX REGISTRY NO. 904303  
DISCIPLINARY CASE NO. 2013-9776

On his last three performance evaluations, Respondent Kurilenko received an overall rating of 4.0 "Highly Competent" twice and 3.0 "Competent" once. He has been awarded one medal for Excellent Police Duty. [REDACTED]  
[REDACTED]  
[REDACTED]

Respondent Kurilenko has been the subject of one prior adjudication. In 2009, he forfeited 14 vacation days and 31 pre-trial suspension days after pleading guilty to consuming alcohol to the extent that he was unfit for duty and being antagonistic and aggressive to a White Plains police sergeant while the sergeant was effecting an arrest.

For your consideration.



Nancy R. Ryan  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JOHN GASCHLER  
TAX REGISTRY NO. 920321  
DISCIPLINARY CASE NO. 2013-9777

On his last three performance evaluations, Respondent Gaschler received an overall rating of 3.5 “Highly Competent/Competent” once and 3.0 “Competent” twice. He has been awarded 13 medals for Excellent Police Duty. [REDACTED]

Respondent Gaschler has been the subject of one prior adjudication. In 2005, he forfeited 12 vacation days for becoming involved in an off-duty physical altercation, failing to request the response of the patrol supervisor, and failing to immediately notify his commanding officer that he was served with an order of protection.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials